

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

August 22, 2003

In Reply Refer To:  
Dominion Cove Point LNG, LP  
Docket No. RP03-552-000

Dominion Cove Point LNG, LP  
120 Tredegar Street  
P.O. Box 26532  
Richmond, Virginia 23261

Attention: Machele F. Grim, Manager, Regulatory and Pricing

Reference: Tariff Sheets Listed in Appendix

Dear Ms. Grim:

1. On July 25, 2003, Dominion Cove Point LNG, LP (Cove Point) filed the above referenced tariff sheets to incorporate into its General Terms and Conditions (GT&C) a new Section 28 to authorize Cove Point from time to time to sell re-gasified LNG or other natural gas it has retained or to which it has taken title, pursuant the terms of the GT&C, effective rate schedules, or Commission orders, and that Cove Point desires to remove from its system for operational reasons. Cove Point also requests waiver of § 284.286 of the Commission's regulations, 18 C.F.R. § 284.286 (2003), such that it need not maintain a separation of its personnel engaged in making these sales. The requested waiver is granted, and the referenced tariff sheets are accepted effective August 25, 2003, subject to conditions as detailed below.

2. Public notice of Cove Point's filing was issued on August 6, 2003, with interventions and protests due on or before August 11, 2003. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. BP Energy Company (BP) filed a limited protest. Atlanta Gas Light and Virginia Natural Gas, Inc. (AGL) jointly filed a motion to intervene in which AGL commented that it is concerned about Cove Point's request for a waiver of the Commission's marketing affiliate standards. In response to BP's protest and AGL's comment, Cove Point filed an answer. The Commission will waive Rule 213(a)(2) of its Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), as Cove Point's answer may aid in the disposition of the

issues raised by the filing. The details of BP's and AGL's pleadings, and of Cove Point's answer, are discussed below.

### **Details of the Instant Filing**

3. Cove Point states that, at certain times, its generally applicable retainage percentages may result in the recovery of excess gas that must be disposed of for operational reasons. Cove Point also contends that it may also have operational reasons to dispose of gas retained in more unusual circumstances. Specifically, Cove Point states that pursuant Rate Schedules LTD-1 and LTD-2, it is authorized to retain and take title to gas that customers fail to withdraw or otherwise dispose of by the date that service agreements terminate, and to assess additional retainage charges if customers under Rate Schedules FPS-1, FPS-2 or FPS-3 fail to satisfy minimum turnover requirements. Finally, Cove Point asserts it will need to dispose of at least some portion of the commissioning cargo of LNG that has been authorized as part of the reactivation of the import terminal.

4. Cove Point notes that the blanket certificate authority set forth in Subpart J of Part 284 of the Commission's regulations authorizes unbundled sales. However, Cove Point states that its current tariff does not explicitly authorize the sales of gas, and that the proposed tariff language in the instant filing rectifies what Cove Point characterizes as an oversight.

5. Cove Point states that, pursuant to the proposed tariff sheets and Commission regulations, the sales by Cove Point shall be made on an unbundled basis, and the purchaser of the re-gasified LNG or other natural gas shall be responsible for transportation. Cove Point also states that, pursuant to the proposed tariff sheets and in accordance with § 284.283 of the Commission's regulations, the point of sale shall be at the outlet of Cove Point's LNG plant or at an intersection with another pipeline system. Cove Point notes that other terms and conditions of the sale shall be the subject of negotiation between Cove Point and the prospective purchaser.

6. Finally, Cove Point requests waiver, to the extent necessary, of § 284.286 of the Commission's regulations, which sets forth standards of conduct governing pipeline marketing affiliates. Cove Point contends that all sales made pursuant to the proposed new tariff section will be incidental to operations, and will likely be unusual occurrences. Cove Point asserts that these types of sales will not render the Cove Point personnel engaged in

them the functional equivalent of a marketing affiliate.<sup>1</sup> Therefore, Cove Point requests the Commission clarify that no separation of personnel or other application of the marketing affiliate standards of conduct, is required as a result of the proposed operational sales.

### **Comments and Protests**

7. BP states that Cove Point's request for authorization to make limited sales of gas for operational reasons is justified. But BP notes that Cove Point's filing is silent on how it plans to treat any profits associated with those gas sales. In particular, BP contends, Cove Point states that it "will need to dispose of at least some portion of the commissioning cargo of LNG that has been authorized as part of the reactivation of the import terminal."<sup>2</sup> BP asserts that Cove Point could make a considerable profit from sales of the commissioning cargo of LNG, and that Cove Point's sales should not serve as a windfall to Cove Point. BP states that this fact is particularly true given that Cove Point has had significant cost overruns that, in a Commission approved settlement, its shippers have agreed to cover through an increase in their LTD-1 rates.<sup>3</sup>

8. BP contends that if Cove Point makes a profit from its gas sales, Cove Point should be required to credit those profits back to the LTD-1 shippers in order to offset some of Cove Point's cost overruns that the LTD-1 shippers are paying through their increased rates. BP argues that incidental gas sales should not be a profit center for Cove Point, and that allowing Cove Point to keep profits derived from gas sales could inappropriately permit Cove Point to over-recover its cost of service.<sup>4</sup> BP asserts that Cove Point should be

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<sup>1</sup> In support of this assertion, Cove Point cites Columbia Gulf Transmission Co., 100 FERC ¶ 61,344 (2002); Trunkline LNG Co., 81 FERC ¶ 61,147 (1997); Steuban Gas Storage Co., 77 FERC ¶ 61,218 (1996).

<sup>2</sup> BP cites Cove Point filing at 2.

<sup>3</sup> BP cites Cove Point LNG Limited Partnership, 102 FERC ¶ 61,227, at P. 7 (2003). In its Answer, Cove Point notes that BP is one of its three customers under Rate Schedule LTD-1.

<sup>4</sup> BP cites Texas Gas Transmission Corporation, 93 FERC ¶ 61,102 at 61,279 (2000) (discussing the Commission's concern that Texas Gas' proposed rate will lead to an over-collection of its cost of service and setting issue for additional proceedings); Enogex Interstate Transmission L.L.C., 85 FERC ¶ 61,329 at 62,292 (1998) (noting that "Commission remains concerned that Ozark LLC could over-recover its cost of service if it

required to flow back to its shippers any profits associated with its gas sales, and, in particular, its sales of gas associated with its recommissioning cargo.

9. AGL states that it is concerned that Cove Point seeks waiver of marketing affiliate standards of conduct. AGL argues that Cove Point should not obtain competitive advantage over other sellers, especially in regards to affiliate sales.

### **Cove Point's Answer**

10. Cove Point contends the Commission should reject BP's protest as baseless. With regard to BP's argument that Cove Point should be required to credit profits from gas sales back to the LTD-1 shippers in order to offset some of Cove Point's cost overruns, and that allowing Cove Point to keep profits derived from gas sales could inappropriately permit Cove Point to over-recover its cost of service, Cove Point asserts there is no connection between BP's cited "cost overruns" and Cove Point's need to purchase LNG for the reactivation process. Cove Point maintains that the sale of portions of the recommissioning cargo, and other potential future sales of gas incidental to operations, has little to do with establishing Cove Point's cost of service. Cove Point states that cost of service relates to the costs associated with Cove Point's provision of jurisdictional services under its approved Rate Schedules. Cove Point states that it sought and was granted authority to include in its cost of service the estimated value of purchased LNG that will be sold -- in the form of "line pack" that remains at the facility.<sup>5</sup> However, Cove Point contends it did not ask its customers to fund the entire cargo that is being used for the reactivation process. Cove Points asserts that in the event it seeks to recover from its jurisdictional customers any costs of gas required in providing its jurisdictional services, it must seek a rate change pursuant to Section 4 of the Natural Gas Act. Cove Point contends it has not sought such authority in its instant proposal. Cove Point asserts that sales of gas by Cove Point are regulated only to the very limited extent provided for in Subpart J of Part

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<sup>4</sup>(...continued)

were able to subscribe more of its capacity than the amount reflected in the determination of its rates"); Williston Basin Interstate Pipeline Company, 84 FERC ¶ 61,081 at 61,375 (1998) (requiring a change to ensure that pipeline will not "potentially over-recover its cost-of-service").

<sup>5</sup> Cove Point cites Exhibit K, Page 7 of 7, of the certificate application filed by Cove Point LNG Limited Partnership on January 30, 2001 in Docket No. CP01-76-000.

284 of the Commission's regulations,<sup>6</sup> and that most of the terms of Cove Point's sales of gas, and any profits arising from those sales, are no more regulated by the Commission than are gas sales by BP.

11. Moreover, Cove Point asserts, even if it were to propose to provide a new jurisdictional sales service (which it claims it is not doing in the instant filing), BP's claim for revenue crediting would be contrary to Commission policy. Cove Point asserts that the Commission's general policy is that pipelines may retain any revenues associated with new services initiated between rate cases, deferring any related disputes about costs and revenues until the next rate case where they may be viewed in a proper context.<sup>7</sup>

12. Cove Point also contends that the three cases cited by BP do not provide any legal support for BP's plea for profit-sharing of gas sales proceeds. Cove Point asserts that Texas Gas arose in the context of a general rate case and the referenced discussion concerns whether the pipeline properly allocated costs in the design of seasonal and term-differentiated firm transportation rates, and the consequent potential for overrecovery; that Enogex involved the Commission's establishment of new initial rates when an interstate pipeline and an intrastate pipeline merged to form a new entity; the referenced discussion relates to potential overrecovery of costs if the pipeline increased its throughput beyond the billing determinants underlying its rates; and, that Williston Basin arose from another general rate case and the referenced discussion concerns the potential for overrecovery if the pipeline recovered more storage royalty payments than it actually paid. Accordingly, Cove Point submits that the cited decisions do not support BP's position.

13. Cove Point also asserts that BP's interpretation of the October 2002 settlement among Cove Point and its LTD-1 shippers, approved by the Commission in Docket Nos. CPO1-76, et al.,<sup>8</sup> provides no support for BP's position. Cove Point acknowledges that, as BP states, those shippers agreed to cover certain increased costs associated with reactivation, but Cove Point notes that by the same token, it agreed to expend additional capital as may be necessary to complete the reactivation, including specified facilities and

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<sup>6</sup> Cove Point cites 18 C.F.R. § 284.281, et seq. (2003).

<sup>7</sup> Cove Point cites Transwestern Pipeline Transmission Co., 88 FERC ¶ 61,206 (1999), order on reh'g, 90 FERC ¶ 61,044 (2000); Panhandle Eastern Pipeline Co., 72 FERC ¶ 61,185 (1995), after tech. conf., 74 FERC ¶ 61,102, reh'g denied, 75 FERC ¶ 61,272 (1996).

<sup>8</sup> Cove Point cites 102 FERC ¶ 61,227 (2003).

activities, and to charge no more than the agreed-upon rates.<sup>9</sup> Cove Point asserts that it has incurred considerable additional expense in completing the reactivation and there is no basis to support the implication that Cove Point will have the opportunity to over-recover its cost of service. Cove Point contends that the relationship between its cost of service and its revenue is immaterial in this proceeding, that the parties mutually agreed upon the terms reflected in the Settlement, and the Settlement does not provide for any revenue crediting associated with incidental gas sales.

14. Cove Point also argues that the Commission should disregard what it asserts is AGL's misplaced concern about waiver of the marketing affiliate standards of conduct. Cove Point states that AGL's concern about Cove Point's request for waiver of marketing affiliate standards is based on an apparent misconstruction of the nature of the requested waiver. Cove Point explained in its filing that all sales made pursuant to its proposed tariff provision will be incidental to operations and likely will be unusual occurrences, and that the Commission has previously ruled that these types of sales do not render the personnel engaged in them sales employees. Cove Points contends that its request is consistent with the Commission's prior rulings; and that the Commission should clarify in this proceeding that no separation of Cove Point personnel, or other application of the marketing affiliate standards of conduct, is required as a result of the proposed operational sales. Cove Point asserts that the principal impact of the requested interpretation (or waiver) of the marketing affiliate standards of conduct is merely that Cove Point's general operational employees can make the incidental sales, and that a separate market division need not be established. Cove Point contends that this approach is warranted by the nature of the sales, as well as by Commission precedent, and that, contrary to AGL's misplaced concern, the approach will not provide Cove Point any competitive advantage over other sellers.

## **Discussion**

### **Sales of Excess Gas**

15. The Commission finds that Cove Point's proposal to sell excess gas on its system is just and reasonable, with some exceptions. The language in Cove Point's proposed Section 28 authorizes Cove Point from time to time to sell re-gasified LNG or other natural gas that it has retained "or taken title to." Cove Point notes in its transmittal letter to the instant filing, that it is authorized to retain and take title to volumes of gas that customers fail to

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<sup>9</sup> Cove Point cites the "October 2002 Settlement" filed by Cove Point in Docket Nos. CP01-76, et al., on October 24, 2002, Article II, Section 1.

withdraw or otherwise dispose of by the date that service agreements terminate.<sup>10</sup> The Commission finds that when Cove Point takes title to such gas that it has confiscated it. The Commission has held that the confiscation of gas a customer leaves on the system after a service agreement terminates constitutes a penalty, and the Commission's Order No. 637 policy requires that penalty revenues, net of costs, should be credited to a pipeline's customers.<sup>11</sup> In the instant filing, the Commission finds that while Cove Point's proposal to sell confiscated gas is generally reasonable, Cove Point may not retain penalty revenues.

16. Additionally, Cove Point notes in its transmittal letter that it is authorized to assess additional retainage charges if customers under certain rate schedules fail to satisfy certain requirements. Such "additional retainage" is essentially assessed as a penalty to those customers for failing to satisfy certain provisions of the rate schedule under which they were provided service by Cove Point. As with volumes of gas that are confiscated, the Commission finds that while it is reasonable for Cove Point to sell the additional retainage, Cove Point must credit the penalty revenues.

17. The Commission notes that Section 12(e) of Cove Point's GT&C, as approved in Cove Point's Order No. 637 compliance proceeding,<sup>12</sup> provides for the crediting of penalty revenues. Accordingly, Cove Point is directed to modify its proposed tariff language within fifteen days of the date of this order to provide for the crediting of revenues from the sale of penalty or confiscated gas, consistent with Section 12(e) of its GT&C.

18. Cove Point also seeks authorization to sell excess natural gas that is the result of its generally applicable retainage, and that Cove Points needs to remove from time to time for operational reasons. The Commission finds that, in order for this proposal to be just and reasonable, Cove Point must modify Section 1.41 of its GT&C. That section describes the procedure whereby it "shall adjust the retainage percentages annually . . . if operating or other conditions require . . . to prevent excessive over or under recovery of retainage." However, it appears that such adjustments would be prospective only and would not correct for accrued over- or underrecoveries of retainage. Accordingly, the Commission finds that Cove Point must modify Section 1.41 to provide for such overrecoveries to be returned to its customers. By the same token, Cove Point should modify Section 1.41 so that, in

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<sup>10</sup> See e.g., Cove Point's Rate Schedule LTD-1, Sections 2.3 and 5.4(f).

<sup>11</sup> See Algonquin LNG, Inc. 96 FERC ¶ 61,301 at 62,172-3 (2001), and ANR Storage Co., 96 FERC ¶ 61,162 at 61,708 (2001), Tennessee Gas Pipeline, 99 FERC ¶ 61, 017 at P 209 (2002). See also 18 CFR 284.12(b)(2)(v).

<sup>12</sup> 99 FERC ¶ 61,142 (2002).

circumstances where the retainage percentage has been too low, Cove Point may recover the underrecoveries. The Commission accepts Cove Point's proposal for authorization to sell excess retainage gas, subject to Cove Point modifying Section 1.41 to provide for the tracking of over- and underrecoveries of retainage gas.

### **Recommissioning Cargo**

19. The Commission finds that it is not clear, from the information provided in the application and the pleadings, whether Cove Point, or the shippers ultimately will be responsible for paying for the cost of the gas used in recommissioning. This information is necessary in order for the Commission to make a determination as to whether Cove Point is entitled to keep the revenues resulting from the sale of any such gas. Accordingly, Cove Point is directed to file within fifteen days of the date of this order, an explanation of whether it or its shippers are ultimately responsible for the cost of the gas used in recommissioning.

### **Point of Sale**

20. The Commission notes that Cove Point offers both firm and interruptible transportation services. The Commission further notes that Cove Point's LNG terminal connects, via Cove Point's own pipeline, to three interstate pipelines: Transcontinental Gas Pipeline, Columbia Gas Transmission and Dominion Transmission. The interconnect with Transcontinental is at Pleasant Valley, Maryland, while the interconnection with Columbia and Dominion is downstream at Loudon, Virginia. At one time, gas was received into Cove Point's system at Pleasant Valley and Loudon, but now, gas is delivered at these points to Transcontinental, Columbia and Dominion.

21. The proposed tariff language states that the point of sale shall be at the outlet of Cove Point's LNG plant or at an intersection with another pipeline system. In its transmittal letter, Cove Point asserts that this proposed tariff language is in accordance with § 284.283 of the Commission's regulations. Although the same words "at an intersection with another pipeline system" appear in both § 284.283 and Cove Point's proposed new Section 28, these words may be subject to an incorrect interpretation as written in Cove Point's proposed tariff provision.



22. The Commission has recognized in numerous orders that unbundling of sales and transportation was the cornerstone of Order No. 636.<sup>13</sup> Section 284.283 of the Commission's regulations states that sales service is unbundled "when gas is sold at a point before it enters a mainline system, at an entry point to a mainline system from a production area, or at an intersection with another pipeline system." The regulation, when properly considered with Order No. 636 and the numerous pipeline restructuring orders that were issued pursuant to Order No. 636, clearly contemplates that unbundled sales of gas may only be permitted at interconnections as far upstream as possible, where gas is received into a pipeline's mainline. This meaning is lost in Cove Point's proposed tariff language. As written, proposed Section 28 might be construed to allow for sales of excess gas at any interconnection, including points where the gas is delivered from Cove Point to an interconnection with another pipeline. Unbundled sales of gas at a downstream interconnection would constitute a bundled sale, because such sales would include the gas itself bundled with transportation to the downstream interconnection. The Commission notes that Cove Point does not currently receive gas at any of its interconnections with interstate pipelines, and that all its interconnections with other interstate pipelines are downstream of Cove Point's LNG facility. Accordingly, the Commission directs Cove Point to modify its proposed tariff language within fifteen days of the date of this order so that all sales are at the outlet of Cove Point's LNG facility.<sup>14</sup>

### **Waiver of Section 284.286**

23. The Commission finds that, based on Cove Point's representations of the limited nature of the subject sales of gas, a limited waiver of § 284.286 is justifiable. The Commission finds that AGL's claim that waiver of § 284.286 of the regulations will give Cove Point a competitive advantage over other natural gas sellers is unsupported. Again, according to Cove Point, the sales that Cove Point contemplates will likely be infrequent, incidental to the other services Cove Point provides, and -- the Commission expects -- not of large volumes. To require Cove Point to establish a separate marketing department for such infrequent, incidental sales, would be unduly burdensome. Accordingly, the

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<sup>13</sup> Order No. 636, at 30,428, n. 146.

<sup>14</sup> See ANR Pipeline Company, 62 FERC ¶ 61,079, slip op. at p. 7. In this order, the Commission rejected ANR's proposal to make sales at headstations because the point of sale was too far downstream. ANR was required to make sales at mainline receipt points (including the interconnection of gathering and transmission facilities) or further upstream. See also Northern Natural Gas Company, 62 FERC ¶ 61,075, 61,389-390 (1993); Arkla Energy Resources, 62 FERC ¶ 61,076 (1993); ANR Pipeline Company, 62 FERC ¶ 61,079 (1993); and Southern Natural Gas Company, 62 FERC ¶ 61,136 (1993).

Commission grants waiver of § 284.286 of the regulations, and clarifies that no separation of personnel or other application of the marketing affiliate standards of conduct, is required as a result of the proposed operational sales.

The Commission orders:

- A. The tariff sheets listed in the Appendix are accepted effective August 25, 2003, subject to the conditions of this order.
- B. Cove Point is directed to file revised tariff sheets within fifteen days of the date of this order, modifying its proposed tariff language as discussed above. Cove Point must also file the additional explanation of whether it or its customers are responsible for the cost of the gas used in recommissioning.
- C. Waiver of § 284.286 of the Commission's regulations is granted to the extent that Cove Point is not required to provide for separation of personnel as a result of Cove Point's proposed operational sales.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

cc: Public File  
All Parties

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**APPENDIX**

**Dominion Cove Point LNG, LP**  
**Original Volume No. 1**  
**Accepted Subject to Conditions**  
**Effective August 25, 2003:**

Second Revised Sheet No. 200

Sheet Nos. 280-281

Original Sheet No. 282

Sheet No. 283-399